

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

AGNES LAWSON, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.: 3:16-cv-2435-BRM-DEA
	:	
PRAXAIR, INC., et al.,	:	
	:	
Defendants.	:	

THIS MATTER comes before the Discovery Master following my November 5, 2019 Order that required Third-Party Defendant University Medical Center of Princeton at Plainsboro (“UMCPP”) to submit certain documents for my *in camera* review. Said order resulted from an application by Defendants and Third-Party Plaintiffs Praxair, Inc., Praxair Distribution, Inc. (PDI) and Praxair Distribution Mid-Atlantic, LLC (PDMA) (collectively, “Praxair”) challenging documents that UMCPP withheld from discovery pursuant to the Patient Safety Act, N.J.S.A. 26:2H-12.23 to 26:2H-12.25c (“PSA”). UMCPP appealed my decision, which was affirmed on January 15, 2020 by United States Magistrate Judge Douglas E. Arpert.

On January 27, 2020, I was advised by counsel for UMCPP that it withdrew the PSA privilege designation as to certain of the documents at issue, and was providing Praxair with a supplemental production and revised privilege log. The documents remaining in dispute were submitted for my review. On February 3, 2020, counsel for Praxair submitted a letter memorandum raising additional arguments that the PSA does not apply to this case, to which UMCPP’s counsel replied on February 6, 2020.

Having reviewed the submissions of counsel and over 2,000 pages of disputed documents, I find as follows:

I. Privileged Documents.

I find the following documents properly fall within the scope of the PSA as part of UMCPP's process of self-critical analysis that followed the April 10, 2014 incident that resulted in the injuries sustained by plaintiff Agnes Lawson (or alternatively in some instances are duplicative of the limited documents to be disclosed). Accordingly, UMCPP need not produce them.

Bates #s: UMCPP 04160; 04230-04307; 04308-04384; 04386-04392; 04393; 04400; 04409; 04454; 04460; 04484-85; 04486-04587; 04588-04593; 04594-04597; 04598-04602; 05637-39; 05640-05643; 05767-05769; 05770-773; 05774-05783; 05797-05811; 05876; 05877; 05882-83; 05889-90; 05892-93; 05894-05909; 05911-16; 05917-05922; 05923-28; 05929-05937; 05938-39; 06008-06011; 06012-06021; 06022; 06058; 06059; 06095-98; 06134-06143; 06144-06237; 06241; 06242-06321; 06324; 06353; 06470; 06754; 06325; 06792-93; 06805-06; 06898; 06899; 06901; 06905; 06959-06962; 06968-69; 07019-07025; 07032-34; 07035; 07040-45; 07046; 07048; 07049; 07050; 07051; 07069-07071; 07072-73; 07074-75; 07141-48; 07149-50; 07158-07165; 07169; 07170; 07183; 07184; 07185; 07186; 07227 – 07240; 07242-07257; 07258; 07259; 07260 - 07277; 07281; 07283; 07284-85; 07286; 07287-89; 07302-04; 07305-07; 07403-07411; 07413-07426; 07427-29; 07459-07461; 07463-68; 07469 – 07481; 07482-07515; 07516-17; 07520-23; 07526-28; 07529-07535; 07541-07550; 07551-58; 07564-67; 07568-70; 07572-73; 07598-07602; 07603; 07604; 07626; 07631; 07633-34; 07666-07682; 07683-86; 07687-07703; 07704-07721; 07722-26; 07727-07731; 07793-94; 07795; 07796-07802; 07803-06; 07807-09; 07810-13; 07814-07831; 08058-08063; 08064-08072; 08074-78; 08084; 08085-87; 08088-89; 08109; 08110-18; 08119-08128; 08129-08134; 08135-08137; 08138-08153; 08157-08168; 08171-72; 08173-08182; 08183-08199; 08200-02; 08205-06; 08207-08; 08209-212; 08218-08220; 08221-22; 08223-26; 08227-08233; 08234-08240; 08242; 08243-45; 07879; 07880; 07883; 07885-889; 07890-91; 07893; 07900-04; 08246-8249; 08254-58; 08260-61; 08262-66; 08627-70; 08271-72; 08273-78; 08279-08283; 08284-86; 08329; 08330-31; 08335-39; 08340-45; 08350-52; 08353-57; 07905-09; 07910-07921; 07922-07933; 07934-07945; 07946-07960; 09913-09925; 09926-09932; 09933-09942; 09943-09944; 09945-46; 09961-62; 09963-09973; 09974-09984; 09985-09999; 10000-10; 10011-21; 10022-32; 10033-38; 07961-65; 08027-29; 08030-31; 08032-08037; 08038-08052; 08054; 08055; 08056; 08057; 09742; 09747; 09750; 09876-79; 09893-09905; 09906-07; 09912; 10039-40; 10041-10054; 10055-10066; 10067-10069;

10070-72; 10073-76; 10077-10080; 10081-85; 10087-89; 10304; 10311-341; 10089-10103; 10104-10112; 10113-10121; 10122-29; 10130-37; 10138-10141; 10142-44; 10145-10151; 10152-10158; 10159-10167; 10168-10175; 10176-10184; 10185-10187; 10188-10891; 10393; 11188; 11211-16; 11217-11290; 11291-11300; 11301-06; 11307-11310; 11311-13; 11314-17.

Total Pages Determined To Be Privileged = 2,009

II. Documents to be Produced.

I find the following documents fall outside the PSA privilege because they contain information that would otherwise be discoverable or admissible, and/or information that is purely factual in nature as opposed to analytical or deliberative. See Brugaletta v. Garcia, 234 N.J. 225, 244 (2018); see also Christy v. Salem, 366 N.J. Super. 535, 543-45 (App. Div. 2004). Accordingly, UMCPP is directed to produce them.

Bates #s: UMCPP 04139-04144; 04410-04414; 04464-66; 05860-63; 05864-67; 05872-75; 06964-67; 07894; 08332-33.

Total Pages To Be Produced = 33

I recognize that UMCPP may wish to challenge my privilege ruling by appealing to Judge Arpert prior to producing these documents. For that reason, I will stay the production of these documents for a period of ten days. If a timely appeal is taken, the stay will continue in effect pending Judge Arpert's ruling.

III. Allocation of Cost of Review.

Judge Arpert's January 15, 2020 Order directed that I allocate the cost attendant to my *in camera* review in proportion to the percentage of materials deemed improperly withheld. Specifically, "[t]he relevant percentage is to be page-based; i.e., the total number of pages comprising the documents deemed improperly withheld as compared to the total number of pages reviewed."

I reviewed and cataloged 2042 pages of documents and ordered 33 pages, or approximately 2%, to be produced. Total time spent reviewing these documents was 18 hours, with another

1.2 hours devoted to authoring this decision, at my billing rate of \$625.00 per hour. Consequently, the cost of the review is \$12,000.00, allocated \$240.00 to UMCPP and \$11,760.00 to Praxair.

Accordingly, for the reasons set forth above,

IT IS on this 19th day of March, 2020

ORDERED that UMCPP produce to Praxair those documents identified as Bates #s: UMCPP 04139-04144; 04410-04414; 04464-66; 05860-63; 05864-67; 05872-75; 06964-67; 07894; 08332-33; and it is further

ORDERED that production of those documents is stayed for a period of ten days. If a timely appeal is taken by UMCPP to the Magistrate within that time, the stay shall continue in effect pending a ruling on the appeal; and it is further

ORDERED that UMCPP shall pay the Discovery Master's costs of \$240.00; and it is further

ORDERED that Praxair shall pay the Discovery Master's costs of \$11,760.00.

A handwritten signature in blue ink, appearing to read "H. G. Carroll", is written over a horizontal line.

Harry G. Carroll, J.A.D. (Ret.), Discovery Master